IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.482 OF 2007

M/s.Astavision Advertising ..Petitioner.

V/s.

Union of India & Anr. ..Respondents.

Mr.Girish Godbole for petitioner.

Shri G.Hariharan with Ms.Navina Kumai i/b. Dr.T.C. Kaushik for respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 13th APRIL, 2007.

P.C. :-

. Submissions of the learned counsel for the parties were heard yesterday. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order passed by the trial Court by which the application for temporary injunction has been rejected. The challenge is also to the order passed by the District Court by which the order of the trial Court has been confirmed in appeal.

2. Petitioner is the original plaintiff. According to the case of the petitioner, a plot of land which is more particularly described in plaint is owned by the second respondent (original second

defendant). According to the case of the petitioner, there was an agreement executed by the second respondent in favour of the petitioner allowing the petitioner to use the space described in paragraph 1 of the plaint for erecting advertising hoardings and sign-boards According to the case of the petitioner, four huge hoardings have been already erected. Reliance is placed on the agreement dated 4th August, 2003 executed by the second respondent in favour of the petitioner for allotment of space used for erecting hoardings. According to the case of the petitioner, there is stipulation to pay yearly rent in respect of the said space to the second respondent. In the suit challenge is to the notice dated 4th November, 2003 issued by the first respondent Union of India by which the petitioner and the second respondent were directed to remove the hoardings within a period of 10 days. The contentions raised by the petitioner is that the hoardings have been erected on private property in possession of the second respondent and, therefore, the first respondent has no right to remove the hoardings.

3. Learned counsel for the petitioner submitted that even the Appellate Court found that the terms of old grant on the basis of which property was allotted to the second respondent were not produced before the

trial Court or the Appellate Court. He submitted that in absence of any right of the first respondent to resume the land allegedly allotted to the second respondent, the first respondent had no right to take action against the hoardings erected by the petitioner. He submitted that even as of today, the land in possession of the second respondent has not been resumed by the first respondent. He submitted that on account of the failure of the first respondent to produce terms of the old grant, it was obvious that even prima facie right of the first respondent to resume the land was not established. He relied upon the decision of the Division Bench of this Court in the case of **P.T. Ankesaria V/s. H.C. Vashistha & Ors. [A.I.R.1980 Bom.9]**. He submitted that the second respondent is in possession of the property in question the owner thereof and second respondent has no objection for raising the hoardings. He placed reliance on the agreement dated 4th August, 2003 executed by the second respondent in favour of the petitioner. He submitted that prima facie case was established by the petitioner for grant of injunction.

4. Learned counsel for the respondent No.1 supported the impugned Judgment and order.

5. I have considered the submissions. Petitioner is claiming on the basis of an agreement dated 4th August, 2003 executed by the second respondent. One of the recitals in the agreement reads thus:-

> " AND WHEREAS the Licensees were made aware of the fact that the Defence Estate Officer had issued the Licensors Notices to remove the hoardings and in spite of the abovesaid notices, the Licensees requested to put up hoarding sites, and have further undertaken to remove the objection of the Defence Estate Officer at their own costs and responsibility. "

6. Clause (4) of the agreement incorporates various covenance made by the petitioner with the second respondent. One of the convenants in clause (c) of the agreement reads thus:-

> " To obtain at their own costs 'No Objection' letters for certificates or relevant permissions from the Pune Cantonment Board. Defence Estates Officer or any other public or statutory authority or body as may be necessary and / or legally required from time to time and at all times during the period of this license. "

7. Agreement on which the petitioner is relying upon shows that on the date of execution of the agreement, petitioner was made aware of the fact that the Defence Estate Officer had issued notice to the second respondent to remove the hoardings. The

agreement specifically records that in spite of the said notice, petitioner has entered into agreement and has undertaken to remove the objection of the Defence Estate Officer. The petitioner has agreed to obtain at its own costs no objection certificate or relevant permissions from the Pune Cantonment Board or Defence Estate Officer or any other public or statutory authority during the period of licence. Thus, petitioner has entered into an agreement with the second respondent with the full knowledge that the Defence Estate Officer had issued notice calling for removal of the hoardings. In fact, agreement clearly records that it was the responsibility of the petitioner to obtain permission / no objection from the Cantonment Board for allowing the hoardings. Thus, prima facie, it appears that the petitioner has entered into an agreement by taking a risk though the second respondent had fully made the petitioner aware the fact that in absence of permission of the concerned authority, the hoarding could not have been erected. The agreement records undertaking of the petitioner in respect of obtaining necessary no objection or permission. Admittedly, petitioner has not obtained any permission or licence.

8. The prayer of temporary injunction is a

discretionary relief. The discretionary relief has to be granted on equitable considerations. Prima facie, it appears to me that petitioner entered into the agreement knowing fully well that the action of erecting hoarding is in absence of appropriate permission / consent will be illegal. Considering this conduct of the petitioner, the Courts below were justified in denying equitable relief in favour of the petitioner. Therefore, no case is made out for interference in Writ Petition under Article 227 of the Constitution of India. Hence Writ Petition is dismissed.

9. On the prayer made by the petitioner, ad-interim relief granted earlier will continue to operate till 30th June, 2007.

(ABHAY S. OKA, J.)